



-4- 115/8

PATENT APPLICATION

IN THE U.S. PATENT AND TRADEMARK OFFICE

March 10, 2003

Applicants: Hidenari YASUI et al

For: PROCESS AND APPARATUS FOR BIOLOGICAL  
TREATMENT OF AQUEOUS ORGANIC WASTES

Serial No.: 08/309 868

Group: 1761

Confirmation No.: 6704

Filed: September 21, 1994

Examiner: Sherrer

Atty. Docket No.: Yanagihara Case 28

Assistant Commissioner for Patents

Washington, DC 20231

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**RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

In response to the restriction requirement dated December 10, 2002, Applicants elect Species I, directed to ozonating aerated aqueous suspension withdrawn from the aeration tank, with traverse.

The Examiner is respectfully requested to reconsider this restriction requirement since it is clearly improper. 37 CFR 1.142(a) states that a restriction requirement can only be made at the discretion of the Examiner before a final action in the application. In the present application, a final rejection of independent Claims 11 and 12 was made on March 31, 1997. A restriction requirement of subject matter contained in the independent claims almost six years after the final rejection of the independent claims clearly is not timely or permitted under 37 CFR 1.142(a). Moreover, the subject matter being subjected to the restriction requirement has been allowed by the Board of Appeals after the Board's reversal of the Examiner's final rejection dated March 31, 1997.

Although the currently presented claims are not drawn to two or more properly divisible inventions, the "so-called species" outlined by the Examiner in the restriction requirement are contained in Genus claims which link the so-

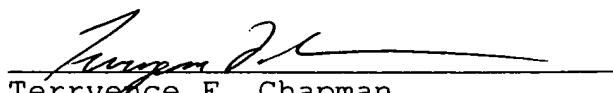
called species. If the Examiner will review MPEP 809.03, he will see that if indeed the species requirement made in the outstanding Office Action was proper, the independent claims would be considered linking claims and thereby require the examination of all of the claims currently pending in the present application.

In order to have a proper restriction, the Examiner must show by appropriate explanation one of the following; separate classification thereof, separate status in the art when they are classified together, or a different field of search. As stated in MPEP 808.02, when the classification is the same, the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions.

Lastly, 37 CFR 1.146 requires that an election of species be made in the first action on an application containing a generic claim to a generic invention and claims to more than one patentably distinct species embraced thereby. This requirement also is not met by the Examiner and makes the present restriction requirement improper.

For the reasons outlined above, it is respectfully submitted that the restriction requirement dated December 10, 2002, is untimely and improper. If the Examiner makes the restriction requirement final, Applicants will petition the Examiner to once again have him reversed. Favorable consideration is respectfully solicited.

Respectfully submitted,



Terryence F. Chapman

TFC/smd

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